

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

JOHN ROBERT SCHULTZ, #369821

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Plaintiff

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v.

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Civil Action No. GLR-12-3664

WARDEN DEHAVEN, et al.

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Defendants

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**MEMORANDUM OPINION**

Pending are Defendant ConMed's Motion to Dismiss (ECF No. 15) and Defendant DeHaven's Motion for Summary Judgment (ECF No. 17). An Answer was filed on behalf of Defendants Finn, Saikali, and Smith. ECF No. 14. Despite being advised that failure to oppose Defendants' dispositive motions may result in dismissal of the claims raised against them, Plaintiff has failed to oppose either motion. ECF Nos. 16 and 18. For the reasons that follow, the motions will be granted without a hearing, this Court having determined that a hearing in this matter is unnecessary. See Local Rule 105.6 (D. Md. 2011).

**Background**

Plaintiff John Robert Schultz ("Schultz") alleges when he arrived at the Harford County Detention Center on January 21, 2009, he made correctional and medical staff aware of the fact he has diabetes. ECF No. 1 at p. 3. He claims that despite informing staff about his condition, medical staff never checked his hemoglobin and never raised his Insulin during his 29-month stay at the Detention Center. Id. He claims these steps should have been taken in an effort to control his blood sugar level which was above 200 every day. He states he was kept at 17 units of Lantis during his entire stay. As a result of what Schultz refers to as "long term exposure to

uncontrolled diabetes,” he developed severe neuropathy in his feet and became incontinent. Id. Schultz seeks monetary damages for injury which he describes as permanent and irreversible. Id.

### **Standard of Review**

In reviewing a complaint in light of a Motion to Dismiss pursuant to Fed. R. Civ. Proc. 12(b)(6), the court accepts all well-pleaded allegations of the complaint as true and construes the facts and reasonable inferences derived therefrom in the light most favorable to the plaintiff. See Venkatraman v. REI Sys., Inc., 417 F.3d 418, 420 (4th Cir. 2005); Ibarra v. United States, 120 F.3d 472, 473 (4th Cir. 1997); Mylan Labs., Inc. v. Matkari, 7 F.3d 1130, 1134 (4th Cir. 1993). Rule 8(a)(2) of the Federal Rules of Civil Procedure requires only a “short and plain statement of the claim showing that the pleader is entitled to relief.” Migdal v. Rowe Price-Fleming Int’l Inc., 248 F.3d 321, 325-26 (4th Cir. 2001); see also Swierkiewicz v. Sorema N.A., 534 U.S. 506, 513 (2002) (stating that a complaint need only satisfy the “simplified pleading standard” of Rule 8(a)).

The Supreme Court of the United States explained a “plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal citations omitted). Nonetheless, the complaint does not need “detailed factual allegations” to survive a motion to dismiss. Id. Instead, “once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint.” Id. at 563. Thus, a complaint need only state “enough facts to state a claim to relief that is plausible on its face.” Id. at 566.

Summary Judgment is governed by Fed. R. Civ. P. 56(a) which provides that:

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

The Supreme Court has clarified that this does not mean that any factual dispute will defeat the motion:

By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986) (emphasis in original).

“The party opposing a properly supported motion for summary judgment ‘may not rest upon the mere allegations or denials of [his] pleadings,’ but rather must ‘set forth specific facts showing that there is a genuine issue for trial.’” Bouchat v. Baltimore Ravens Football Club, Inc., 346 F.3d 514, 525 (4th Cir. 2003) (alteration in original) (quoting Fed. R. Civ. P. 56(e)). The court should “view the evidence in the light most favorable to . . . the nonmovant, and draw all inferences in her favor without weighing the evidence or assessing the witness’ credibility.” Dennis v. Columbia Colleton Med. Ctr., Inc., 290 F.3d 639, 644-45 (4th Cir. 2002). The court must, however, also abide by the “affirmative obligation of the trial judge to prevent factually unsupported claims and defenses from proceeding to trial.” Bouchat, 346 F.3d at 526 (internal quotation marks omitted) (quoting Drewitt v. Pratt, 999 F.2d 774, 778-79 (4th Cir. 1993), and citing Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986)).

### **Analysis**

The constitutional protections afforded a pre-trial detainee as provided by the Fourteenth Amendment are co-extensive with those provided by the Eighth Amendment. See Bell v. Wolfish, 441 U.S. 520, 535 (1979). “Due process rights of a pretrial detainee are at least as

great as the eighth amendment protections available to the convicted prisoner.” Hill v. Nicodemus, 979 F.2d 987, 991 (4th Cir. 1992), citing Martin v. Gentile, 849 F.2d 863, 870 (4th Cir. 1988); see also Riley v. Dorton, 115 F.3d 1159, 1167 (4th Cir. 1997) (pre-trial detainee’s Fourteenth Amendment right with respect to excessive force is similar to prisoner’s Eighth Amendment right, both require more than de minimus injury).

In order to state a constitutional claim for denial of medical care a prisoner must demonstrate that the defendant’s acts or omissions amounted to deliberate indifference to his serious medical needs. See Estelle v. Gamble, 429 U.S. 97, 106 (1976). In essence, the treatment rendered must be so grossly incompetent or inadequate as to shock the conscience or to be intolerable to fundamental fairness. See Miltier v. Beorn, 896 F.2d 848, 851 (4th Cir. 1990) (citation omitted). "Deliberate indifference may be demonstrated by either actual intent or reckless disregard." Miltier, 896 F.2d at 851. Reckless disregard occurs when a defendant "knows of and disregards an excessive risk to inmate health or safety; the [defendant] must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists and he must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994). Thus, a health care provider must have actual knowledge of a serious condition, not just knowledge of the symptoms. See Johnson v. Quinones, 145 F.3d 164, 168 (4th Cir. 1998). Mere negligence or malpractice does not rise to a constitutional level. See Russell v. Sheffer, 528 F.2d 318, 319 (4th Cir. 1975); Donlan v. Smith, 662 F.Supp. 352, 361 (D. Md. 1986).

DeHaven asserts, in part, that the claims against him should be dismissed because there is no evidence or allegation that he engaged in any wrong-doing leading to Schultz’s alleged injury. ConMed asserts it is entitled to dismissal because any allegation against the corporation are based on respondeat superior liability which does not apply in 1983 litigation.

It is well established that the doctrine of respondeat superior does not apply in § 1983 claims. See Love-Lane v. Martin, 355 F.3d 766, 782 (4th Cir. 2004) (no respondeat superior liability under § 1983); see also Trulock v. Freeh, 275 F.3d 391, 402 (4th Cir. 2001) (no respondeat superior liability in a Bivens suit). Liability of supervisory officials “is not based on ordinary principles of respondeat superior, but rather is premised on ‘recognition that supervisory indifference or tacit authorization of subordinates' misconduct may be a causative factor in the constitutional injuries they inflict on those committed to their care.’” Baynard v. Malone, 268 F.3d 228, 235 (4th Cir. 2001) citing Slakan v. Porter, 737 F.2d 368, 372 (4th Cir. 1984).

Supervisory liability under § 1983 must be supported with evidence that: (1) the supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury to citizens like the plaintiff; (2) the supervisor's response to the knowledge was so inadequate as to show deliberate indifference to or tacit authorization of the alleged offensive practices; and (3) there was an affirmative causal link between the supervisor's inaction and the particular constitutional injury suffered by the plaintiff. See Shaw v. Stroud, 13 F.3d 791, 799 (4th Cir. 1994). Plaintiff has pointed to no action or inaction on the part of Defendant DeHaven or ConMed that resulted in a constitutional injury, nor has he opposed either motion seeking dismissal of the claims against these Defendants. Accordingly, Plaintiff's claims against DeHaven and ConMed shall be dismissed.

Claims against the remaining Defendants, Rachel Finn, R.N., Dr. Fadi Saikali, and Dr. Meindart Smith, shall proceed subject to the schedule set forth in the separate Order which follows.

May 13, 2013

/s/

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George L. Russell, III  
United States District Judge